

**MONTANA TWELFTH JUDICIAL DISTRICT
COURT RULES**

LIBERTY, HILL, AND CHOUTEAU COUNTIES

RULE 1 - TERMS OF COURT AND CALENDAR

Terms of court shall be set for the trial of civil and criminal cases in each county by the judge at such times, as in the discretion of such judge, the matters pending in such county are sufficient to warrant such a term.

RULE 2 - LAW AND MOTION DAYS

Law and motion days shall regularly be held in the courthouses in the county seats of the district as follows, except that the Court may, in its discretion, hear and dispose of all law and motion matters at any place in the district: Hill County, Havre, Montana: Every Monday and Wednesday at 10:00 A.M. and 2:00 P.M., except holidays and trial term. Chouteau County, Fort Benton, Montana: The first and third Tuesdays of each month at 10:00 A.M., except holidays and trial term. Liberty County, Chester, Montana: The third Thursday of each month at 10:00 A.M., except holidays and trial term.

Additional law and motion days may be held in any county of the district when in the discretion of the judge presiding therein, the business of the district so requires. When the regular law and motion day falls on a holiday, the next following day will be law and motion day.

RULE 3 - TRIAL CALENDAR AND PRE-TRIAL PROCEEDINGS

(a) *Scheduling Conference* - Whenever a case is at issue and either party desires to have the case tried, counsel for such party may file with the Clerk of Court a request for a scheduling conference setting forth the title and number of the case. A copy of the request shall be served upon opposing counsel of record.

(b) *Pre-trial Calendar and Hearing* - The clerk shall keep a pre-trial calendar upon which all civil cases shall be entered as soon as they are at issue. Any case on the pre-trial calendar may be set for a scheduling conference by the Court at any time. The Clerk of Court, on the order of the Court, will give the parties 10 days notice of the scheduling conference.

(c) *Pre-trial Procedure* - Rule 16, Rules of Civil Procedure, and Rule 5, Uniform District Court Rules, as amended from time to time, will govern all pre-trial matters.

RULE 4 - TRIAL CALENDAR AND CONDUCT OF TRIALS

(a) *Regular Trial Calendar*. Following a scheduling conference and an order therein, said cause and such others as the Court shall direct, shall be placed by the Clerk upon the regular trial calendar. Notwithstanding the above, the Court may, in its discretion, and upon such notice as the Court deems reasonable, set down for trial any cause coming to issue.

(b) *Non-jury Cases*. Non-jury cases need not await a call of the jury trial calendar to be set for trial; such cases may be set for trial on order of the Court upon motion of a party. Reasonable notice shall be given to opposing parties. The Court, of its own motion, may set such cases for trial on a date convenient to the Court upon an order giving the respective parties reasonable notice of the date said case will be tried. The foregoing rule shall apply in like manner where the presiding judge shall have been called in and assumed jurisdiction.

(c) *Trial Briefs*. Trial briefs shall be submitted as required in the pre-trial order.

(d) *Continuances*. When, after the day is fixed for the trial of any cause, either party shall desire a continuance, he shall give to his adversary five days' notice that application will be made therefor, and the grounds thereof. For good cause the time may be shortened. Continuances may be granted on the Court's own motion or upon motion of counsel or a party, if such a continuance does not inconvenience the Court in the progress of the trial calendar. Continuances, even when stipulated to by counsel, will not be routinely granted. If the application for a continuance is based on the absence of a witness, the testimony expected to be adduced by the witness shall be set forth in detail in the motion. A party opposing the continuance, without admitting the truth of the testimony, may admit the witness would so testify. In such event, the continuance shall be denied, unless in the opinion of the Court, manifest injustice may result.

(e) *Conduct*.

(1) During any contested hearing no argument, or motion to

the Court, other than a formal objection or exception, will be entertained, unless the attorney making the same first arises in his place to address the Court, and the Court grants a request for argument. Argument, when permitted by the Court, shall cease on completion of rebuttal.

(2) In the examination of witnesses, but one attorney for each party will be permitted to examine or cross examine the same witness, except by prior permission of the Court.

(f) Challenge to Jury. There shall be no viva voce challenge of jurors except for cause. Peremptory challenges shall be exercised or waived by counsel indicating on a jury list to be kept by the Clerk what jurors are peremptorily challenged.

(g) Jury's Notes. Jurors shall be allowed to take notes unless the presiding judge, considering the nature of the case, orders otherwise. Any party that wishes to request the jury to take notes shall provide adequate materials. No juror shall be required to take notes. Jurors' notes shall be collected by the bailiff at the end of each court day and returned to the jurors at the beginning of the next day. Jurors shall be allowed to have their notes during deliberation pursuant to §25-7-404, MCA.

(h) Invoking 5th Amendment Privilege. Any attorney, party, or witness, who anticipates that any witness to be called in a trial by jury might refuse to answer a question on the grounds that the answer may tend to incriminate him or her, shall so advise the court in advance of such witness testifying. The court shall thereupon hold a hearing outside of the presence of the jury to determine if, in fact, such will be the case. An appropriate order will then be entered for the purpose of avoiding, if possible, "taking the 5th" in the presence of a jury.

(i) Attorney as Witness. If the attorney of either party offers himself as a witness on behalf of his client, and gives evidence on the merits of an issue, he shall not argue the case or sum it up to the jury unless by permission of the Court, and then shall not comment on his own testimony.

(j) Character Witnesses. Not more than three witnesses for each side will be allowed to testify as to character in any cause, civil or criminal, without leave of Court first obtained.

(k) Parenting Witnesses. Not more than three witnesses for each side will be allowed to testify concerning parenting practices and abilities in any contested action concerning custody or visitation of children, without leave of Court first obtained.

RULE 5 - PHOTOGRAPHY AND TELEVISION

Broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court, or recesses between sessions, shall be allowed only with prior notice to, and specific permission of, the presiding judge. All equipment used and persons using it shall remain behind the bar. No flash lights, other lighting equipment, or large microphones shall be used. Photographers, television cameras, and other recording devices, when allowed, shall remain stationary, and shall be used so as to not disrupt the proceedings. No photographs of or televising of the members of a jury shall be permitted.

RULE 6 - STIPULATIONS, DUTY OF ATTORNEYS

Agreements and consents between the parties or their counsel in respect to proceedings in any case shall be in writing or entered in the minutes of the Court. It shall be the duty of the party relying upon such minute entry to see that the same is duly entered. Should such agreement or consent not be in writing, or fail to be entered in the minutes of the Court, the Court may nevertheless on proper showing, and in the interest of justice, hear and determine any motion in relation thereto.

RULE 7 - TIME

Computation of time shall be as provided in M.R. Civ. P., and specifically Rule 6 thereof. However, when a motion directed to a pleading is sustained or overruled, the losing party shall have twenty days within which to further plead, unless a different time shall be prescribed in the order sustaining or overruling the pleading.

RULE 8 - TELEFAX FILINGS

The filing of any document with the Clerk of Court that may be done by mail may be done by telefax transmission subject to the provisions of this rule.

(a) Filing of Telefax Document. The date and time of receipt of the transmission by the Clerk of Court shall be the date and time of filing. If the original is not served on the same day as the telefax transmission, service of the telefax document must be made as provided in Rule 5, Mont.

R. Civ. Pro. It is the obligation of the person telefaxing any document to arrange for it to be delivered to the Clerk of Court's office. A telefaxed document must show all necessary signatures or it will not be filed by the clerk.

(b) Filing of Original. The sender shall, on the date of the telefax transmission, mail the original of whatever is sent by telefax to the Clerk of Court by first class mail. The original must be signed pursuant to Rule 11, Mont. R. Civ. Pro. The original of the document shall be filed by the Clerk and the date of filing shall be deemed to be the date of the filing of the telefax transmission. Service of the original must be made as provided in Rule 5, Mont. R. Civ. Pro. The Certificate of Service must reflect that a telefax transmission was sent to the Clerk of Court, and the date of such transmission. Unless an order of court is obtained extending the time, failure of the Clerk to receive the signed original within 5 working days shall cause the telefaxed document to be stricken and it shall be of no force or effect whatever. It shall be the obligation of the party filing the telefax document to insure that the original is received by the Clerk of Court within the allotted 5 working days.

(c) Telefax Receivers.

(1) Documents may be telefaxed to the Court in Fort Benton at the offices of the Chouteau County Commissioners, telephone # (406) 622-3631.

(2) Documents may be telefaxed to the Court in Havre at the offices of the Hill County Sheriff, telephone # (406) 265-5487.

(3) Documents may be telefaxed to the Court in Chester at the Liberty County Clerk of Court, 406/759-5996.

(d) Fees and Costs. The use of telefax equipment shall not change or delay the required payment of fees. It shall be the obligation of the person filing the telefaxed document to pay any required fees in the manner and within the time required by the Clerk of Court. It shall be the obligation of the person telefaxing any document to pay any costs associated with use of telefax equipment or telephone services.

RULE 9 - DISMISSAL OF ACTION FOR LACHES

A cause that has been passed three times on the annual pre-trial calendar or annual general calendar, or any combination thereof, shall be deemed prima facie subject to dismissal for laches, or such other disposition thereof as to the Court may seem just and proper. Before an action or proceeding is dismissed for laches, 20 days prior notice in writing shall be given to counsel of record for all parties and to parties who are not represented by counsel.

RULE 10 - NOTICE IN PROBATE PROCEEDINGS

Whenever any notice in any probate, guardianship, trust or similar proceeding is required to be given by law or by the order of the Court, or a judge thereof, and no mode is provided by law for the giving of such notice, it shall be by personal service thereof, or by posting or publication, as the Court or judge, by order, may direct and for such time as may be fixed by such order, provided that when the notice is given by publication or posting, it shall not be less than 10 days.

RULE 11 - CLERK, CUSTODIAN OF FILES

(a) Check Out of Files. The Clerks of Court are the custodians of the files of this Court. Files of civil cases may be taken from the clerk's office only by members in good standing of the State Bar of Montana, according to procedures established by the several clerks. In no event shall any file be taken outside of the county in which it is filed. All files shall be returned to the clerk not later than the next day after being checked out, unless the next day is a Saturday, Sunday or a holiday, in which case the file shall be returned before the close of business the same day it is checked out.

(b) Files Not To Be Checked Out. No criminal file, or confidential file, may be checked out. No last will and testament, bond, undertaking or judgment, before it is recorded, shall be taken from the clerk's office, without written order of the Court.

(c) Files Not To Be Altered. No papers in a file shall be altered or corrected in any way and nothing shall be taken from the file.

RULE 12 - AMENDMENTS BY ERASURE OR ADDITIONS

No amendments shall be made to any filed document by erasing or adding any words in the original on file, save in the handwriting of the judge or in his presence, and initialed by him, unless otherwise ordered by the Court. No documents shall be deleted from any file, nor shall any page in a document be removed and another substituted therefore.

RULE 13 - NOTIFICATION OF RULINGS

It shall be the duty of the Clerk after any order or decision is made in a case in the absence of counsel, to notify counsel or pro se parties of the substance of the order. Said notice shall be by personal delivery of a copy thereof or by mailing a copy of the decision no later than the next working day.

RULE 14 - ATTORNEY FEES

(a) Probate Proceedings. In probate proceedings involving formal closings or supervised administration attorney's fees shall be approved by the Court at or before the time of final distribution. Fees to be allowed shall be as contracted for with the personal representative and shall not exceed fees allowed by §72-3-633, MCA, without special court order after petition therefore.

(b) Appointed Criminal Defense Counsel. Attorneys other than those under contract to Hill County who are appointed to represent indigent criminal defendants, juveniles in youth court, or minors or parents in abuse, dependency and neglect matters, shall be paid compensation at the rate of \$45.00 per hour, plus reimbursement for expenses reasonably and necessarily incurred. Each claim shall be supported by a written statement specifying the time expended, services rendered and expenses incurred. Expenses totaling more than \$25.00 require prior approval.

The Maximum fee, without prior Court approval, shall not exceed: Case in which one or more felonies are charged — \$2,000.00
Case in which one or more misdemeanors only are charged - \$750.00

In extraordinary cases, the Court may authorize additional compensation. Except as to those attorneys disqualified by law or conflict of interest, it is the policy of the Court that all attorneys within the district, in rotation where possible, act as defense counsel on appointment by the Court.

(c) Civil Actions. In civil cases other than probate where attorney fees are recoverable by law or contract, they shall be determined and fixed by the jury or the Court upon evidence as to the amount of a reasonable fee presented in open court at the trial or hearing, unless the Court has previously ordered presentation of such evidence at another time.

RULE 15 - COURT APPEARANCES

(a) Prisoners. Prisoners may appear in court in jail clothing when a jury or jury panel is not present. While in the courtroom prisoners will have handcuffs, manacles, and other restraining devices removed unless, in the discretion of the Sheriff, they are deemed advisable. Prisoners shall not appear in court or in any place where they may be observed by a jury or jury panel in prison clothing or in restraints without permission of the Court first obtained. Suitable clothing for a criminal defendant who has none shall, on application of counsel, be provided by the Court for appearances before a jury.

(b) Attorneys. Attorneys shall appear before the Court in clothing that is appropriately formal for the conduct of serious matters and that meets current concepts of business attire. Attorneys shall advise their clients and witnesses to dress in clean clothes which shall be appropriate for serious occasions in the conduct of their ordinary business.

(c) Conduct. Spectators shall remain quiet while Court is in session. Court sessions are not an appropriate place for small children who cannot be expected to conduct themselves suitably. Such children shall remain outside the courtroom. In order to avoid unnecessary embarrassment, attorneys shall advise clients of this rule in advance.

RULE 16 - OMNIBUS HEARINGS

There shall be an omnibus hearing in all criminal cases in which the defendant enters a plea of not guilty. The hearing shall be held within 60 days after entry of the plea. All motions and other requests shall be made in writing at least 10 days before the omnibus hearing unless the Court otherwise directs. At the hearing the Court shall ascertain whether the parties have completed discovery and, if not, shall make orders to expedite completion of discovery; shall make rulings on motions which are pending or shall set a time for further hearing thereon; shall ascertain whether there are any procedural or constitutional issues which should be considered, and whether a pre-trial conference should be scheduled. All pre-trial issues or claims of pre-trial error shall be raised at the omnibus hearing. If additional discovery, investigation or preparation, or hearing is necessary for a fair and orderly determination of any issue, the omnibus hearing will be continued from time to time until all matters raised are properly disposed of.

RULE 17 - AFFIDAVIT PRACTICE

(a) Injunction. Parties applying for injunctive relief or a temporary restraining order, on an ex parte basis, pursuant to §§ 40-4-121, 27-19-314, or 27-19-315, MCA, shall meet the requirements of § 27-19-315, MCA, before such injunction or temporary restraining order will be issued. Such matters shall be set for hearing at the earliest possible date, allowing time for service of any Order to Show Cause. Failure of an adverse party to appear at the show cause hearing or to file timely counter-affidavits or pleadings may result in the application for injunction or temporary restraining order being summarily granted.

(b) Child Custody. A party seeking a temporary custody order or modification of a custody decree shall immediately serve on the respondent or counsel, if any, the motion and affidavit required by §4-4-220, MCA. Service may be made either personally or by mail. Except in those situations justifying an immediate ex parte order, the respondent shall have 10 days after service within which to file counter affidavits before an order to show cause may issue.

RULE 18 - SUBPOENA DUCES TECUM

(a) Issued by Clerk. A Subpoena Duces Tecum shall be issued by the clerk only in conformity with § 46-15-101, MCA, or Rule 45, M. R. of Civ. Pro. Any other Subpoena Duces Tecum may issue only upon a court order after application and notice.

(b) Health Care Information. A Subpoena Duces Tecum commanding production of health care information shall be issued by the clerk only when it is clear from the documents filed that the requirements of §§ 50-16-535; 50-15-536, MCA, have been met. The clerk may refuse to issue a Subpoena Duces Tecum commanding production of health care information, and refer the request to the Court.

(c) Drug or Alcohol Treatment Records. A Subpoena Duces Tecum commanding production of records of the identity, diagnosis, prognosis, or treatment of any person which are maintained in connection with any alcohol or drug abuse prevention or treatment facility or practitioner may be issued only by the Court. Any such information maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be disclosed only in conformity with 42 USC §290ee-3(b)(2)(C).

RULE 19 - HILL COUNTY LAW LIBRARY

The law library in Hill County is provided for the use of the Court. The library is open for the convenience of others during the business day. No books or materials are to be removed from the library at any time. Use of the library during other than regular business hours shall be only by special permission of the Judge, and access shall be at the discretion of the Sheriff, depending upon available personnel.

RULE 20 - AMENDMENTS

(a) Amendments. Amendments to these rules may be made from time to time by Court Order filed with the Clerks of Court.

(b) Applicability. These rules, in addition to the Uniform District Court Rules, shall apply to all cases in this Court each County in said District and shall be entered upon the Minutes of this Court in each County of said District. The Clerks of Court shall each keep an original copy of these Rules and any amendments thereto.

(c) Standing Committee on Rules. A standing committee on rules is established, consisting of three attorneys appointed by the Court from this District, which committee may recommend to the Court changes in these rules as deemed advisable. The initial members of this committee are: Stephen Brown, Susan Gobbs, Patricia Jensen.

DATED this 8th day of March, 1991.